SUPREME COURT OF THE UNITED STATES.

No. 7.

AMOS BINNEY, APPELLANT,

VERSUS

The President and Directors of the Chesapeake and Ohio Canal Company.

APPEAL FROM THE CIRCUIT COURT U. S. FOR WASHINGTON COUNTY, D. C.

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DISTRICT OF COLUMBIA, *sct.*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the first day of the same month, in the year of our Lord one thousand eight hundred and twenty-eight, and of the Independence of the United States of America the fifty-third,

Present,

The Honorable WILLIAM CRANCH, *Chief Judge,*
BUCKNER THRUSTON, JAMES S. MORSELL, } *Assistant Judges,*
TENCH RINGGOLD, Esq., *Marshal,* WILLIAM BRENT, *Clerk.*

In the record and proceedings of said court, amongst others, are the following, to wit:

Amos Binney against the President and Directors of the Chesapeake and Ohio Canal Company.

Be it remembered, that, on the tenth day of January, in the year one thousand eight hundred and twenty-nine, (being during the December term of 1828,) the said Amos Binney, by Francis S. Key, Esquire, his solicitor, filed in court here, against the said President and Directors of the Chesapeake and Ohio Canal Company, the following bill of complaint, to wit:

To the Honorable the Circuit Court of the District of Columbia for the county of Washington, as a Court of Equity sitting:

The bill of complaint of Amos Binney humbly showeth: That he is the lawful holder of certain property in this county, adjacent to the canal formerly made and held by the Potomac Company, and now held by the President and Directors of the Chesapeake and Ohio Canal Company by transfer from said Potomac Company, whom he prays may be made defendants hereto. That, as such proprietor, he is entitled, under the 13th section of the charter of the said Potomac Company, to water rights of great value for sites on his said property. That he derives title to said land, and claims the right of said water, on the grounds and in the manner following, viz:

And your orator alleges that, in all the applications and propositions herein before stated to have been made by the proprietors aforesaid to the Potomac Company, and in the application since made by your orator to the President and Directors of the Chesapeake and Ohio Canal Company, as herein before stated, it was offered and proposed to said companies to enter into reasonable agreement concerning the just proportions of the expenses incurred by making the canal or cut so large as to be capable of carrying the quantity of water then, at the time of such application, flowing therein, and which was then, and still is, sufficient for the purposes of navigation, and also for water-works then intended to be erected on the sites on the property before described, and now held by your orator. And your orator alleges not only that the canal or cut aforesaid hath been already, with perfect convenience to the company, and without injury to the purposes of navigation, made sufficiently large to carry such quantity of water as is sufficient both for the purposes of navigation and for water-works, as aforesaid, as is evident from the quantity now wasted and thrown off at various sluices upon the land of your orator; but, also, that the enlargement of the said canal or cut may be at all times conveniently made to almost any extent, so as to admit any quantity of water that may be found necessary both for the purposes of navigation and manufactories, on the sites aforesaid on your orator's said land; and he refers to the applications now making to the Congress of the United States, by the said Chesapeake and Ohio Canal Company, for the privilege of thus adapting the said canal to both the said purposes of navigation and manufactories, to prove, that, in the opinion of said defendants themselves, these purposes may, by arrangements, be conveniently effected.

And your orator further states, that he is a stockholder in the said Chesapeake and Ohio Canal Company, and consequently interested in the just and proper expenditure of the funds of that company on the object for which they were subscribed. As such stockholder, he objects to the application of those funds to the contemplated extension of the canal through Georgetown to the city of Washington, both on account of such extension being against the almost universal understanding of those who subscribed to the stock of said company, and against the provision of their charter, and also on the ground of the inexpediency of applying funds intended to remove obstructions in the river to the intended works where there are no obstructions. Your orator, therefore, as a stockholder, and as the holder of land through which the contemplated extension is intended to pass, objects to the said extension, as contrary to the charter and to the understanding and interest of the subscribers; and avers that the head of navigable tide water, the proper termination of the eastern section of the canal, is consi-

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derably above Georgetown, and above the land of your orator, through which, notwithstanding, it is the intention of the said defendants to proceed with the work.

In tender consideration whereof, and for as much as your orator is without remedy at law, and without the intervention of this honorable court, to the end that the said President and Directors of the said Chesapeake and Ohio Canal Company may severally, upon their corporal oaths, make true and full and perfect answers to all and singular the premises, as fully and particularly as if the same were again repeated and interrogated, and more especially may say whether the facts set forth in this bill are true or not; and may it please your honors to grant unto your orator the United States' writ of subpœna, to the said President and Directors directed, commanding them to appear by a certain day, and under a certain penalty there commanded to be and appear before this honorable court, then and there to answer the premises, and to abide by, and stand to, such order and decree therein as to your honors shall seem agreeable to equity and good conscience; and that they shall be required by the order or decree of your honors to perform in good faith such agreement as is set forth in the 13th section aforesaid of the original charter of the Potomac Company, for the benefit of the proprietors through whose lands the canal was to pass; and that commissioners shall be appointed to ascertain the just proportions of the expenses incurred, or that may be incurred, in the enlargement of the canal, so as to make it capable of carrying such quantities of water as may be sufficient for the purposes of navigation, and such intended water-works on the sites on the land of your orator, and that such other and further relief may be decreed to your orator as to your honors may seem meet. And your orator also prays the United States' writ of injunction, to the said defendants, their engineers, officers, and agents, directed, enjoining and prohibiting them and each of them from proceeding in the extension of the said canal, or any of their works in relation to the same, to any point below navigable tide water in the District of Columbia, and from passing through the lands of your orator below such tide water, and from erecting dams or obstructions to the passage of the water into the present canal.

JONES & KEY,
Solicitors for complainant.

And the said President and Directors appearing in court here by Robert I. Taylor, Esq., their solicitor, file in court here the following demurrer to the said bill of complaint:

The said defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the complainant's said bill of complaint to be true, in such sort, manner, and form, as the same are therein and thereby set forth and alleged, for answer to the said complainant's bill of complaint, these defendants do demur in law. Wherefore, and for as much as the complainant's bill of complaint doth not contain (as these defendants are advised) any matter of equity sufficient to establish any right or demand against these defendants, nor to draw them in suit into this honorable court, touching the matters complained of in the complainant's said bill of complaint; and, also, for many other errors and imperfections in the complainant's said bill of complaint contained, these defendants do demur in law thereunto, and humbly crave the judgment of this honorable court, whether they ought not to make answer to the said bill of complaint, and humbly